Supreme Court, U.S.
FILED
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-916

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ALICE CHATHAS and BYRON ELLIS,

Petitioners,

vs.

NORBERT SMITH, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF RESPONDENTS NORBERT SMITH, THOMAS EVOY, CARL BERGMAN AND KENNETH KLOMHAUS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ALAN J. BRINKMEIER
Counsel of Record
PRETZEL & STOUFFER, CHARTERED
One South Wacker Drive
Chicago, Illinois 60606
(312) 346-1973

Attorneys for Respondents Norbert Smith, Thomas Evoy, Carl Bergman and Kenneth Klomhaus

Of Counsel:

ROBERT MARC CHEMERS
JOHN J. WALSH III
MICHAEL G. BRUTON

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

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QUESTION PRESENTED

Although the Petitioners' questions presented lump a variety of alleged constitutional issues into each question, these Respondents will accept the statement of questions presented by the Petitioners.

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No. 89-910

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vs.

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OPINIONS BELOW

DISTRICT COURT: The District Court's opinion granting the Respondents' Motion for a Directed Verdict at the close of the Petitioners' case is unreported.

COURT OF APPEALS: The opinion of United States Court of Appeals for the Seventh Circuit affirming the District Court's judgment is reported at 884 F.2d 980.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to consider the Petition for Writ of Certiorari pursuant to 28 U.S.C. § 1254(1). The Court of Appeals rendered its opinion on September 5, 1989. The Petition was timely filed in accordance with Supreme Court Rule 20 and 28 U.S.C. § 2102(c).

The Court of Appeals had jurisdiction to review the District Court's final Order pursuant to 28 U.S.C. § 1291.

The District Court had jurisdiction pursuant to 28 U.S.C. § 1343. The District Court denied the Petitioners' timely post-trial motion on October 15, 1987. The Petitioners filed a Notice of Appeal on November 9, 1987.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Petitioners have set forth all relevant statutes and constitutional provisions in their Petition.

STATEMENT OF THE CASE

The Petitioners filed this action pursuant to Section 1 of the Civil Rights Act of 1871, 42 U.S.C. § 1983. They originally alleged that the Respondents deprived them of rights protected by the Fourth, Sixth and Fourteenth Amendments to the United States Constitution. At the

close of the Petitioners' case, the District Court granted Respondents Smith, Bergman, Evoy and Klomhaus' Motion for a Directed Verdict. After carefully considering the evidence, the District Court concluded that the Petitioners had failed to establish any violation of their constitutional rights and that there was no evidence to suggest that these Respondents did not have a good faith belief that their actions were constitutional. Once again, after carefully reviewing the Record, the Court of Appeals affirmed the District Court's judgment. The Petitioners have now filed this Petition seeking a Writ of Certiorari.

STATEMENT OF FACTS

Shortly after receiving notice that he had not been enrolled in the Illinois Municipal Retirement Fund (IMRF), Byron Ellis, through his attorney, Alice Chathas, filed suit against the IMRF; the Board of Trustees of the Village of Evergreen Park; Carl Bergman, an Evergreen Park police officer and secretary of the Evergreen Park Police Pension Fund; and Hamilton Maher, Clerk of the Village of Evergreen Park and local agent for the IMRF (R. 445-46, 76, 449).[1] On March 30, 1981, Alice Chathas and Byron

[1] In their questions presented, the Petitioners have asked this Court to review the District Court and the Court of Appeals' decisions that the Petitioners failed to present sufficient evidence to allow a reasonable juror to conclude that the Respondents had violated their constitutional rights. In order to determine whether the case is worthy of further review, the Court should have all the facts elicited during the Petitioners' case. The Petitioners'

(Footnote continued on following page)

Ellis arrived at the Worth Township Courthouse in Alsip, Illinois to attend a scheduled hearing on pending motions and possibly the beginning of a trial in the pension litigation (R. 458). This case arises out of an incident which occurred at the courthouse on March 30, 1981.

The Respondents can be divided into three groups.[2] On March 30, 1981, Vincent Cainkar was an attorney for the Village of Evergreen Park (C. 138 at par. 3). He was representing the Village in Mr. Ellis' pension litigation. Carmen Dicarlo, James Ross, Angie Chmielewski and Vincent Ruffalo were deputies of the Sheriff's Department of Cook County, Illinois (C. 138 at par. 2). On March 30, 1981, these Respondents, Norbert Smith, Carl Bergman, Thomas Evoy and Kenneth Klomhaus were police officers of various rank with the Evergreen Park Police Department (C. 138 at par. 1).

EVENTS PRIOR TO MARCH 30, 1981

Prior to March 30, 1981, Mr. Ellis made a claim for disability benefits. The IMRF referred him to Dr. Ramesh H. Doshi, a psychiatrist, for an examination to determine whether he was disabled (C. 138 at par. 7; R. 354-55). Dr. Doshi first examined Mr. Ellis on March 19, 1981 (C. 138

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[1] *continued*
Statement of Facts is not complete, therefore, these Respondents set forth those facts in detail. Although the record in this case has not been filed in this Court, these Respondents will specifically refer to the portions of the record which support the facts as set forth in their Statement of Facts. References to the Common Law Record will be cited as (C. ____). References to the trial transcript will be cited as (R. ____).

[2] All questions presented do not relate to all the Respondents, therefore, these Respondents will set forth only the facts relevant to the allegations against them.

at par. 7; R. 354-55). Dr. Doshi testified that during the course of the examination, Mr. Ellis told him that he was feeling depressed, he was having a great deal of difficulty with sleep and concentration and he was experiencing distress. In addition, Mr. Ellis felt that there was a conspiracy against him (R. 356). Dr. Doshi further testified that Mr. Ellis suggested that since his pension litigation began, several incidents had occurred which he believed threatened his life and his attorney's life (R. 357). It was obvious to Dr. Doshi that Mr. Ellis believed that the Evergreen Park Police Department was responsible for these incidents (R. 277-78).

During the course of the examination, Mr. Ellis discussed his pension litigation and according to Dr. Doshi stated that if he felt mistreated or cornered, he may "blow somebody away". Mr. Ellis admitted that he told Dr. Doshi that "if someone was to make and be a threat to my life that I would take the appropriate amount of action to terminate the situation, even if the action meant taking their life, to kill them." (R. 848). It was clear to Dr. Doshi that the potential victims were the administration and or police department of the Village of Evergreen Park (R. 364). Dr. Doshi concluded that Mr. Ellis' "insight and judgment are grossly impaired due to delusional state." (R. 260). Dr. Doshi's ultimate diagnosis was paranoid state with depression (R. 361).

Due to Dr. Doshi's concern about Mr. Ellis' threatening statement, he examined him a second time on Saturday, March 21, 1981 (R. 363). Following that examination, Dr. Doshi's diagnosis remained the same and Dr. Doshi recommended that Mr. Ellis agree to be voluntarily admitted to a hospital (R. 363-64). Dr. Doshi testified that, when Mr. Ellis refused a voluntary admission to the hospital, he advised him that he felt obligated to let the intended

victims know about his concern over the threats. In addition, Dr. Doshi called Attorney Chathas to request her assistance in convincing Mr. Ellis to enter a hospital voluntarily and to inform her that he felt obligated to notify Mr. Ellis' potential victims (R. 364).

On the afternoon of March 21, 1981, Dr. Doshi called the Evergreen Park Police Department because he felt a "serious potential for serious harm to one or more people anticipating the court date coming up for the pension decision" (R. 365-66). The call was directed to Sergeant Klomhaus (R. 366). After introducing himself, Dr. Doshi informed Sergeant Klomhaus of the statements made by Ellis and told him that although he did not think Ellis was an immediate threat, the potential for violence was there (R. 366-67). Approximately one hour later, Dr. Doshi received a call from Sergeant Klomhaus to confirm the earlier conversation. Approximately one week later, Sergeant Klomhaus contacted Dr. Doshi and told him that the legal department of the Village had asked him to sign a certificate for involuntary hospitalization (R. 368, 380).

On March 28, 1981, Dr. Doshi completed that certificate, including the following impression: "If patient feels under stress or if he loses control, situation could prove dangerous to others and even himself." (R. 383). Dr. Doshi considered the court appearance to be a particularly stressful situation and if some judgment or ruling was made against him the time bomb could go off (R. 418). Dr. Doshi believed there was a serious potential for violence (R. 386).

There were at least two incidents prior to March 21, 1981 which raised concern in the minds of Evergreen Park police officers about Mr. Ellis' psychological stability. An Interdepartmental Investigating Officer Memorandum, dated December 11, 1978, referred to a station complaint

that Mr. Ellis had a gun in his house (R. 127). According to the Memorandum, Officers Randolph, Swanstrom and Sergeant Klomhaus responded to a call from Mrs. Ellis that a man had a gun (R. 127-128). The Memorandum prepared by Sergeant Klomhaus and addressed to Assistant Chief Bergman stated: "Mrs. Ellis stated she found him in a highly nervous state," and that "he had been sitting on the couch in the living room with his silver gun by his side. She further stated that when she called, he went to the basement. Mrs. Ellis stated she feared that Detective Ellis might take his own life." (R. 129-30). The Memorandum continued, "spoke to Detective Ellis from the head of the stairs and received the reply that if we or anyone came down and set a foot on the stairs he would blow us away." (R. 130).

Lieutenant Bergman informed Chief Norbert Smith about the prior incident with Mr. Ellis. Chief Smith testified that he instructed Lieutenant Bergman not to allow Mr. Ellis to return to work until he was examined by a Village doctor and a psychiatrist (R. 180). On January 8, 1979, Dr. McLaughlin, wrote a letter indicating that Byron Ellis had been under his care and "since stabilization of domestic problems he has exhibited no symptom or findings and he may return to work" (R. 135, 181). After this incident Mr. Ellis did return to his position as a detective with the Evergreen Park Police Department (R. 135).

A second incident occurred while Mr. Ellis was on duty on March 12, 1980. A Memorandum prepared by Sergeant Grimes stated: "at approximately 2106 hours reporting sergeant heard Officer Ellis request the supervisor and an additional officer to meet him at Christ Hospital. . . . Reporting sergeant was advised that Ellis would be admitted to the hospital for tests." (R. 144-45). In accordance with Department policy, Chief Smith made inquiries about

the nature of Mr. Ellis' illness (R. 146, 189). Ms. Chathas responded with an April 22, 1980 letter stating "Mr. Ellis entered the emergency room at Christ Hospital, he being under significant physical and emotional strain and apprehension due to his pending pension litigation and certain incidents which were of constant occurrence at the police department." (R. 146). Chief Smith learned that Ellis was under the care of Dr. B. J. Sokhey, a psychiatrist (R. 188-89). Based upon Dr. Sokhey's advice, Mr. Ellis did not return to his position with the Evergreen Park Police Department (R. 814).

In addition to these two incidents, prior to receiving the telephone call from Dr. Doshi on March 21, 1981, Chief Smith was aware that Mr. Ellis kept approximately 14 guns in his home, that he made his own bullets and that he kept containers of gun powder in his home (R. 176-77, 232-33). Mr. Ellis holds a sharpshooter classification with the National Rifle Association (R. 805). Between March 14 and March 18, 1981, Chief Smith had received a claim for workmen's compensation on behalf of Mr. Ellis. The claim form indicated that the nature of the injury claimed was anxiety, neurosis and depression (R. 201-02). Chief Smith was aware of these factors when on March 23, 1981, he received a Memorandum from Sergeant Klomhaus describing the warnings from Dr. Doshi (R. 196-198). That Memorandum stated:

> "At approximately 1605 hours on line 422-5231 reporting sergeant received a call from Dr. Doshi, who advised that the call was in regard to an employee whom the doctor feels is potentially dangerous. The doctor advised that the officer is Byron Ellis."
>
> "Reporting sergeant requested the doctor call on line 422-2141 so that the call could be taken in private, which the doctor immediately did."

"A brief synopsis of the doctor's comments are as follows: The doctor is advising the police because of the potential for homicide that he feels Byron Ellis exhibits, Officer Ellis commented words to the effect that if those who are conspiring against him don't back off he's going to blow them away."

"Byron was sent to Dr. Doshi by the IMRF for evaluation on a disability. Byron went with his attorney. The evaluation took place on Thursday, March 19, 1981 at the doctor's office at 7600 College Drive, Palos."

"The doctor feels that Byron is in need of immediate hospitalization, and with the attorney attempted to talk Byron into going into the hospital. Byron refused."

"The doctor described Byron as a time bomb who, although appears to be stable now, can go off at any time. The doctor feels Byron should not be in possession of any weapon."

"The doctor further feels that the next court date on his suit against IMRF and the Village, which is believed to be 3/30 of '81, could be a critical point, especially if the decision is against Byron."

"The doctor stated he advised both the attorney and Byron that he would be notifying the police department about Byron's comments. Byron said 'go ahead'."

"Reporting sergeant verified that Dr. Doshi is on the staff of Little Company of Mary Hospital and also has an office at 7600 College Drive in Palos."

"Reporting sergeant called the doctor back at his home on line 422-2144 to verify if he indeed was the caller. It was verified."

"The doctor further related that in order to commit someone such as Byron a petition must be signed, and anyone can sign it. This, with two doctors' statements that a person is in need of psychiatric help, will allow a judge to sign commitment papers."

> "The doctor advised that the reason for the call is because he feels that there is great potential for something bad to happen and he feels bound by law to report it. Reporting sergeant advised Chief Smith of the conversation by telephone to Chief Smith's home. Doctor can be reached at his office. TX No. . . . , or at home, . . . , if further explanation or comment is needed."

(R. 196-98). After reading the Memorandum, Chief Smith reviewed the tape recordings of Sergeant Klomhaus' conversations with Dr. Doshi and then contacted the village attorney, Vincent Cainkar, to apprise him of the situation (R. 203-04, 225). Neither Chief Smith nor Lieutenant Bergman had encountered a situation such as this, therefore, they also sought guidance from Mr. Cainkar on how to handle the situation (R. 204, 243).[3] Lieutenant Bergman testified that they did not want a confrontation with Ellis at his home where he had access to weapons, bullets and gun powder (R. 244).

On Friday, March 27, 1981, Mr. Cainkar called Chief Smith to inform him that he had discussed the situation with Judge Eiserman, the judge presiding over the courthouse where the hearing in the pension case was scheduled. The judge ordered additional security for the courtroom and ordered all persons entering the courthouse that day to be searched (R. 205). Mr. Cainkar asked Chief Smith to have one of his officers pick up a certificate from his home, take it to Dr. Doshi to be completed and then return it to his home (R. 205-06). Sergeant Klomhaus obtained the certificate and after it was completed by Dr.

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[3] Mr. Ellis, also a police officer, testified that the first time he had heard of the statute providing for an involuntary psychiatric evaluation was March 30, 1981 (R. 899).

Doshi on Saturday, March 28, 1981, Lieutenant Evoy returned it to Mr. Cainkar (R. 206).

MARCH 30, 1981

On March 30, 1981, Officer Bergman, Lieutenant Evoy and Chief Smith arrived at the courthouse before Ms. Chathas and Mr. Ellis (R. 151-52). At the request of the sheriff's deputies they removed the bullets from their guns (R. 228-29, 243, 285). These Evergreen Park Officers met with Deputies Ross and Ruffalo and Mr. Cainkar (R. 153). Both Deputy Ross and Mr. Cainkar informed the officers that the judge did not want Mr. Ellis or the matter in the courtroom (R. 154). During a discussion which included Officers Smith, Evoy and Bergman, Deputies Ross and Ruffalo and Mr. Cainkar, a decision was made to stop Mr. Ellis after he entered the building and take him into custody for a psychiatric evaluation (R. 154-55).

Ms. Chathas and Mr. Ellis entered the building and passed through an initial search station set-up by the Cook County Sheriff's Deputies (R. 157). After Mr. Ellis passed through the initial search station, he proceeded toward the courtroom (R. 158-59). Chief Smith, Lieutenant Evoy and Lieutenant Bergman approached Ellis and informed him that they had a certificate signed by Dr. Doshi and asked Ellis to accompany them to the Tinley Park Mental Health Center for a psychiatric evaluation (R. 159; C. 138 at par. 19; R. 295-97, 317).

Prior to confronting Mr. Ellis, the Evergreen Park police officers did not speak to Ms. Chathas (R. 161). When Mr. Ellis called for Ms. Chathas, she emerged from the jury room (R. 164). Mr. Ellis, Chief Smith and Lieutenants Evoy and Bergman all entered the jury room (R.

165, C. 138 at par. 19). Deputy Ruffalo testified that he did not observe any of the Evergreen Park police officers beating, punching or kicking Mr. Ellis (R. 692-93). In addition, the Petitioners and some sheriff's deputies were also present in the jury room (R. 165-66, C. 303).

Mr. Ellis remained in the jury room for 30 to 90 minutes. During that time, Respondent Ruffalo also remained in the jury room. Ms. Chathas and Respondents Cainkar, Smith, Evoy, Bergman and Ross entered and left the room at various times (C. 138 at par. 20). During this time, Ms. Chathas was able to leave the jury room (R. 472, 543, 617). In fact, she left to obtain a copy of the Illinois Revised Statutes to check on the authority for seeking an involuntary psychiatric evaluation of Ellis (R. 474). Ms. Chathas testified that none of the Evergreen Park police officers touched, pushed or put their hands on her at any time or in any way (R. 544-45). When asked how Chief Smith hindered her, Chathas responded "not a physical hindrance like blocking me or preventing me that way, but hindering me in that I needed to speak with my client and he would not cooperate in permitting me some privacy to maintain the integrity of the attorney-client relationship" (R. 630-31).

Eventually, paramedics from the Alsip Fire Department transported Mr. Ellis, Ms. Chathas and an Alsip police officer to the Tinley Park Mental Health Center (C. 138 at par. 24). Upon arrival at Tinley Park, they were met by Donald Warmack, a Mental Health Specialist II working in central admissions (R. 737-38). Shortly after Mr. Ellis arrived, Lieutenant Evoy and Sergeant Klomhaus also arrived at Tinley Park (C. 138 at par. 25; R. 747). The officers presented Mr. Warmack with the certificate signed by Dr. Doshi. In Mr. Warmack's opinion, the certificate was not valid because it had not been signed by

a physician who had examined the patient within the prior 72 hours (R. 748). According to Mr. Warmack, the information contained in the certificate would have been sufficient if Dr. Doshi had come to Tinley Park and signed a petition based upon his personal observations (R. 777-78).

After deciding that the certificate was not valid, Mr. Warmack asked everyone present whether they had any personal observations which could be used as the basis for a petition for a 24-hour evaluation (R. 751-53). Sergeant Klomhaus relayed the 1978 incident in the basement of Ellis' home but Mr. Warmack rejected that observation as too distant to support a petition (R. 289, 752). After approximately 30 to 45 minutes at Tinley Park, Ellis was permitted to leave (R. 755, 904). Although he claimed to be sore, Ellis did not go to see a doctor about any physical injuries he may have suffered on March 30, 1981 (R. 857). Nor has he seen any psychiatrist subsequent to March 30, 1981 (R. 814).

Petitioners' Complaint

On July 13, 1981, Alice Chathas and Byron Ellis filed suit seeking to recover damages pursuant to 42 U.S.C. § 1983 for injuries resulting from the deprivation of constitutional rights (C. 1). Specifically, the Petitioners claimed that the Respondents' actions deprived them of rights protected by the Fourth, Sixth and Fourteenth Amendments (C. 1). On May 14, 1986, the Petitioners filed an Amended Complaint again citing 42 U.S.C. § 1983 and violations of the Fourth, Sixth and Fourteenth Amendments as the basis for their causes of action (C. 183). Respondents Smith, Bergman, Evoy and Klomhaus filed a motion for summary judgment (C. 207-213, 216). The District Court took that motion under advisement. At the close of the

Petitioners' case, these Respondents made a motion for a directed verdict essentially incorporating the arguments made in their motion for summary judgment (C. 380).

District Court

In granting these Respondents' Motion for a Directed Verdict, the District Court held that the Evergreen Park police officers had probable cause to detain Mr. Ellis for the purpose of attempting to have him admitted for a 24-hour psychological evaluation (R. 973-75). Furthermore, the Petitioners had failed to present any evidence establishing that the Evergreen Park police officers were not acting with a good faith belief that they had probable cause to detain Mr. Ellis (R. 975). Finally, the District Court concluded that there was no evidence presented that Ms. Chathas was in any way restrained or detained by Evergreen Park police officers (R. 972). After the District Court denied their motion for a new trial, the Petitioners appealed the judgment.

Court of Appeals

After reviewing the Record, the Court of Appeals affirmed the District Court's decision. *Chathas v. Smith*, 884 F.2d 980 (7th Cir. 1989). The Court of Appeals unanimously held that the evidence presented at trial could lead only to the conclusion that the Respondents had probable cause to transport Mr. Ellis to the mental health center or at least had a good faith belief that they had probable cause. 884 F.2d at 987, 989. The Court concluded that because the Respondents had probable cause, they did not violate Mr. Ellis' right to be free from unreasonable searches or seizures. *Id.*

The unanimous Court also concluded that even if the Constitution protects a litigant's right of access to state courts, in this case, the Petitioners presented no evidence that the continuance of the pension litigation, which was ordered by the judge prior to the time Ms. Chathas and Mr. Ellis arrived at the courthouse, resulted in any prejudice or injury to the Petitioners. 884 F.2d at 987-88, 990.

The majority of the Court held that there was no evidence of any severe injury to the Petitioners or malice by the Respondents. 884 F.2d at 988. Moreover, the majority concluded that based upon the evidence presented by the Petitioners, a jury could not reasonably find that the use of force was unreasonable under the circumstances. 884 F.2d at 988. In addition, the majority concluded that, at the time of this incident, the standard by which the Respondents' conduct is measured in order to determine when that conduct constitutes the use of excessive force was not settled. *Id.* Therefore, the majority also concluded that the Respondents would be entitled to qualified immunity. Significantly, the Court also concluded that the Petitioners had presented no evidence to support their conclusory allegations of conspiracy. 884 F.2d at 989.

The dissenting appellate judge disagreed with the majority's opinion in only three respects. First, the dissenting judge believed that the evidence was sufficient for a juror to conclude that Ms. Chathas was subject to an unreasonable search and seizure. 884 F.2d at 990. Second, the dissenting judge believed that Mr. Ellis had presented a *prima facie* case that he was subjected to use of excessive force. *Id.* Third, the dissenting judge believed that Petitioners' Fourth Amendment rights had been clearly established, at the time of the incident, thereby prohibiting the use of the qualified immunity defense. *Id.*

REASONS FOR DENYING THE WRIT

This Court has set forth in Supreme Court Rule 17 guidelines for determining when certiorari should be granted to review the decision in a particular case. When the guidelines in Rule 17 are applied to the Court of Appeals' holdings in this case, it is clear that the questions presented by the Petitioners do not warrant review by this Court. The questions presented either do not relate to the conduct of these Respondents or ask this Court to disagree with the District Court and the majority of the Appellate Court which concluded that the Petitioners failed to present sufficient facts to make a *prima facie* case for a violation of their constitutional rights. The Petitioners do not raise questions which ask the Court to resolve any conflict among the circuits or to consider an important question of federal law which this Court has not previously considered.

THE QUESTIONS PRESENTED DO NOT ASK THE COURT TO RESOLVE A CONFLICT AMONG THE CIRCUITS OR TO ADDRESS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN PREVIOUSLY ADDRESSED BY THIS COURT.

The first question presented is whether the conduct by the Cook County Sheriff's Deputies in directing Ms. Chathas to an empty jury room to conduct a more through search in private violated her Fourth Amendment right to be free from unreasonable search and seizure and whether the force used in conducting the search was excessive. Initially, it is important to note that the Court of Appeals concluded that there was no evidence presented to support the allegations of conspiracy. 884 F.2d

at 989. The allegations of conspiracy had not even been raised in the District Court. In the absence of evidence to support the allegations of conspiracy, the conduct of each individual Respondent must be considered separately. No Respondent or group of Respondents can be responsible for the conduct of other Respondents.

These Respondents were not involved in directing Ms. Chathas to the jury room or conducting the search. In fact, Ms. Chathas testified that none of the Evergreen Park police officers touched her (R. 544-45). She also testified that during the 30-90 minutes Mr. Ellis was detained in the jury room, she entered and left the room at various times (C. 138 at par. 18). She admitted that she did not even see Sergeant Klomhaus at the courthouse (R. 544). He certainly could not have conducted an unreasonable search or seizure or used excessive force. Although Ms. Chathas did testify that Chief Smith hindered her by not giving her privacy to talk to her client, this alleged hinderance is not a search or seizure within the meaning of the Fourth Amendment.

Even assuming that somehow the conduct of these Respondents' can be considered a search or a seizure, there is no evidence that it was not reasonable under the circumstances. The Fourth Amendment prohibits only unreasonable searches and seizures. The constitutionality of a search or seizure depends upon the reasonableness of the government's interest balanced against the degree to which the individual's liberty is infringed. *United States v. Place*, 462 U.S. 696, 703 (1983). The government's interest in this case justified any minimal infringement on Ms. Chathas' liberty.

Based upon the evidence presented it is also impossible for a reasonable juror to conclude that these Respon-

dents used excessive force against Ms. Chathas. An excessive force claim must be evaluated under the objective reasonableness standard of the Fourth Amendment. *Graham v. Connor*, ____ U.S. ____, 109 S. Ct. 1865 (1989). The Court of Appeals unanimously concluded that based upon the totality of the circumstances, the Petitioners had not presented evidence to establish that any force used against Ms. Chathas was unreasonable. 884 F.2d at 988, 990. This Court need not be the third Court to reach this conclusion.[4]

The second question presented by the Petitioners is whether Mr. Ellis was deprived of any constitutional right. The Petitioners appear to rely on three different constitutional rights. First, the Petitioners claim that Mr. Ellis was denied his constitutional right of access to the state courts. Although the Seventh Circuit questioned the continued viability of such a right, the Court did not hold that there was no constitutionally protected right of access to the state courts. Rather, the Court held that in this case, the Petitioners had failed to present any evidence that they were denied access. In fact, at worst their access was only delayed. The Petitioners failed to present any evidence that they were prejudiced by the delay.

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[4] The Petitioners argue that the Court of Appeals erred when it applied the qualified immunity defense to the Petitioners' excessive force claims. Although the Court of Appeals correctly applied the qualified immunity defense, this Court need not consider that issue. The Court of Appeals' conclusion that the standard for analyzing a constitutional claim of excessive use of force was not settled and, therefore, that the Respondents were entitled to qualified immunity was an unnecessary, superfluous analysis. The Court had already concluded that under either the Fourth Amendment objective reasonableness test or the Fourteenth Amendment analysis requiring sever injuries, disproportionate use of force and malice, the Petitioners had failed to meet their burden. 884 F.2d at 988.

If this Court were to recognize a constitutional right to a speedy trial in civil actions in state court, the volume of Section 1983 cases would dramatically increase. While delay may at some point equal denial, the Seventh Circuit was correct that in this case it did not.

The Petitioners apparently are also asking this Court to review the Court of Appeals conclusion that these Respondents did not use excessive force on Mr. Ellis. The degree of force which is appropriate in any particular case depends upon the circumstances of that case. *Graham*, 109 S.Ct. at 4865. The majority of the Court of Appeals believed that the Petitioners had not presented sufficient evidence to establish that the degree of force used by these Respondents was not reasonable under the circumstances. The Petitioners have not demonstrated that this conclusion is inconsistent with factual conclusions of this Court or other Circuits in similar cases. Moreover, the Petitioners have not established that this issue presents an important question of federal law which should be resolved by this Court.[5]

The Petitioners also argue that these Respondents violated Mr. Ellis' Fourth Amendment right to be free from unreasonable searches and seizures because they did not have probable cause to detain him long enough to attempt to have him involuntarily admitted for a 24 hour psychiatric evaluation. Probable cause arises at the moment that the facts and circumstances within the officer's knowledge warrant a prudent man to believe that the suspect had committed or was committing a crime. *Beck v. Ohio*, 379 U.S. 89, 91 (1964). The District Court and the unanimous Court of Appeals carefully reviewed all the evidence and

[5] See Note 4 *supra*.

concluded that based upon the circumstances and facts available to the officers in this case, these Respondents did have the probable cause necessary to detain Mr. Ellis.

These Respondents had received the warnings from Dr. Doshi. They had personal knowledge of at least two prior incidents which questioned Mr. Ellis' stability. They had sought advise of counsel. The presiding judge of the courthouse had advised them that he did not want the individual or the matter in his court room. The actual intrusion on Mr. Ellis' liberty was minimal. The 2-2½ hour detention was justified by all of the information available to these Respondents. Again, the Petitioners ask this Court to be the third Court to review the particular facts in this case. The Petitioners second question does not meet the standards set forth in Supreme Court Rule 17.

The third question presented is whether Respondent, Vincent Cainkar was entitled to absolute immunity. The Writ of Certiorari should not be granted to consider this question. First, this question is not directed at these Respondents. Moreover, the Seventh Circuit expressly refused to consider this issue. The Court stated: "Although the district court held that Cainkar was entitled to absolute immunity, we need not decide this issue because Cainkar, like the other defendants, either did not violate anybody's constitutional rights or was qualifiedly immune." 884 F.2d at 989. Accordingly, the Seventh Circuit's holding is not inconsistent with a holding of this Court or another circuit and the Petitioners' third question presented is not an important question of federal law which should be resolved by this Court. The Petitioners have offered no other reasons for this Court to grant the writ of certiorari.

CONCLUSION

Supreme Court Rule 17 provides guidelines for consideration of petitions for writ of certiorari. The Petitioners have failed to establish that any of the questions presented fall within the guidelines set forth in that Rule. When the questions presented are stripped to their essence, the Petitioners do not present important questions of federal law or quest ons on which there is disagreement among the Circuits. Instead, the Petitioners ask this Court to be the third Court to consider whether these Respondents had probable cause to detain Mr. Ellis and whether these Respondents used reasonable force against Mr. Ellis under the circumstances. These Respondents respectfully submit that these questions are not the type worthy of consideration by this Court. Accordingly. these Respondents request that the Petition be denied.

Respectfully submitted,

ALAN J. BRINKMEIER
Counsel of Record
PRETZEL & STOUFFER, CHARTERED
One South Wacker Drive
Chicago, Illinois 60606
(312) 346-1973

Attorneys for Respondents
Norbert Smith, Thomas Evoy,
Carl Bergman and Kenneth Klomhaus

Of Counsel:

ROBERT MARC CHEMERS
JOHN J. WALSH III
MICHAEL G. BRUTON